IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 752 OF 2005

Rajendra Tanagi Yadav ..Appellant

versus

Surekha Maruti Warekar & Ors. ..Respondents

WITH

FIRST APPEAL NO. 753 OF 2005

Mohan Dhavlu Nale & Anr. ..Appellants

versus

Surekha Maruti Warekar & Ors. ..Respondents

Mr. S. B. Shetye for the Appellants.

Mr. Rahul Kulkarni for the Respondents No. 1 to 3.

CORAM : D. G. DESHPANDE,J.

DATE : 19TH SEPTEMBER,2005

P.C. :

1. Heard Advocate for the Appellants and the Respondent Nos. 1 to 3.

2. Appellants in both the appeals are the owners of the vehicle and respondents are claimants.

Only one submission was made by the counsel for the appellants that the matter requires to be remanded back because out of 21 adjournments given by the Tribunal in the case, the appellants were present on 18 occasions and only on last two occasions, their Advocate remained absent and that too on the last date Advocate filed Pursis for withdrawing his appearance. No intimation was given by the advocate to the appellants. This resulted in exparte order where Rs.3 lacs were ordered to be paid to the claimants. He also submitted that the appellants have deposited Rs.25,000/- each in both these appeals. The appellants are further directed to deposit Rs.25,000/- each in both the appeals within two weeks from today.

3. Counsel for the appellants also produced certified copy of the Roznama before the Tribunal. What is stated by the Advocate for the appellants is fortified and is supported by this Roznama. It cannot be said that the appellants were not diligent or negligent in prosecuting their cause. Their Advocate appears to have given pursis on 3.12.2004 and nothing is recorded in the Roznama that before doing that, Advocate has served notice on appellants and written intimation. This is therefore a fit case for remand. Therefore, I pass the following order:

ORDER

. Both the Appeals are allowed.

. Judgment is set aside. Matter is remanded back to the Tribunal for giving opportunity to both the sides to lead evidence afresh. It does not mean that evidence that has been adduced by the claimants cannot be used. The appellants may cross-examine those witnesses and claimants will be entitled to lead additional evidence if they want to do.

. Tribunal to complete the trial within four months from the date of appearance of the parties. Both the parties agree to appear before the Tribunal on 5.10.2005.

. Appellants are directed to deposit Rs.25,000/- each in both the appeals before the trial court within two weeks from today.

. Claimants are permitted to withdraw the entire amount of Rs.1 lacs, Rs.50,000/- deposited in this Court and Rs.50,000/- deposited in the Tribunal, subject to final result of the matter.

. Appellant to pay cost of Rs.1,000/- to the respondents .

. Both the Appeals along with Civil Applications are disposed of.

. Certified copy expedited.

19.9.2005 (D.G. DESHPANDE, J.)